

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**February 23, 2010**

**The Rhode Island Ethics Commission held its 4th meeting of 2010 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, February 23, 2010, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair Frederick K. Butler\***

**Ross Cheit, Vice Chair Edward A. Magro**

**James V. Murray Deborah M. Cerullo SSND**

**John D. Lynch, Jr.**

**Also present were William J. Conley, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Peter J. Maninci and Gary V. Petrarca.**

**At 9:00 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held**

on February 9, 2010. Chair Binder noted that page 6 should be amended to reflect that she inquired whether it is known if Senate President Paiva Weed supports the constitutional amendment legislation. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

**VOTED:** To approve minutes of the Open Session held on February 9, 2010, as amended.

The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Paul R. McAdam, a member of the Exeter Zoning Board of Review. Staff Attorney Leyden presented the Commission Staff recommendation. The Petitioner was present. Commissioner Butler arrived at 9:04 a.m.\*

Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Paul R. McAdam, a member of the Exeter Zoning Board of Review.

The next advisory opinion was that of Ronald A. McKenna, a member of the Lincoln Town Council. Staff Attorney DeVault presented the

**Commission Staff recommendation. The Petitioner was present. Staff Attorney DeVault advised of two corrections to the draft opinion. She informed that the Petitioner originally had approximated that 160 property owners would be eligible but, upon further review, realized that 1,325 property owners would be eligible. She also noted that the reference to an “income tax exemption” in paragraph two should read “property tax exemption.” In response to Commissioner Cheit, the Petitioner stated that all but one of the four members who already voted are under age 65. He noted that one must apply for the exemption before April 15th each year and that the one member did not apply for it. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Ronald A. McKenna, a member of the Lincoln Town Council.**

**The next advisory opinion was that of Edward Connors, a member of the City of East Providence Historic District Commission. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Edward Connors, a member of the City of East Providence Historic District Commission.**

**The next advisory opinion was that of Kathryn Leonard, a member of the Newport City Council. The Petitioner was not present. Staff Attorney Leyden advised that draft opinion did not provide the Petitioner with safe harbor. She stated her belief that the matter is now moot, as the Petitioner informed her last week that she had recused on the matter involving her business associate's property and had voted on the other issue. Chair Binder stated that the matter is moot.**

**At 9:15 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:**

**a.) Motion to approve minutes of Executive Session held on February 9, 2010.**

**b.) In re: Stephen Durkee,  
Complaint No. 2010-3.**

**c.) In re: Stephen Durkee,  
Complaint No. 2010-4.**

**d.) Status Update:**

**Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission,  
Superior Court C.A. No. 08-7325.**

**e.) Motion to return to Open Session.**

**The Commission returned to Open Session at 9:30 a.m. The next order of business was a motion to seal minutes of the Executive Session held on February 23, 2010. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on February 23, 2010.**

**Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on February 9, 2010 by unanimous vote; 2) initially determined that In re: Stephen Durkee, Complaint No. 2010-3, states facts sufficient to constitute a knowing and willful violation of the Code by unanimous vote; 3) initially determined that In re: Stephen Durkee, Complaint No. 2010-4, states facts sufficient to constitute a knowing and willful violation of the Code by unanimous vote; and 4) received a litigation update on Larisa v. Rhode Island Ethics Commission.**

**The next order of business was discussion regarding the search for new Legal Counsel and the appointment of a Personnel**

Subcommittee. Chair Binder announced with regret that Legal Counsel Conley has submitted his resignation effective February 26th. She advised that an advertisement has been placed in RI Lawyers Weekly and is posted on the Commission's website. In response to Chair Binder's request for volunteers to serve on the Personnel Subcommittee, Commissioners Murray and Lynch volunteered. Chair Binder stated that she will also serve. Commissioner Cheit inquired whether the Commission should retain interim counsel for its upcoming meetings. Staff Attorney Gramitt noted that the next meeting is a public hearing on proposed regulations. Executive Director Willever advised that applications must be submitted by March 9th. Chair Binder suggested that the Commission wait and see what matters are pending once the applications have been submitted.

The next order of business was discussion of Staff background information and preliminary language relating to potential amendment of the definition of "business associate." Staff Attorney DeVault summarized the four options presented in her memorandum for preliminary consideration. She also discussed a proposed revision of Regulation 5002, which would update the existing regulatory language to reflect the adoption of new regulations, specifically the nepotism regulation, and add a provision requiring recusal where a duly authorized representative of a labor organization of which the public official is a dues-paying member appears before the official's public body. Chair Binder suggested that the

Commission workshop the proposals. Commissioner Cheit expressed that this information is helpful and a workshop would assist in distinguishing between people opposed to doing anything and those wanting to broaden or narrow the regulatory scope based upon principle. Chair Binder directed the Staff to request comment on the proposals and bring the public comments back to the Commission in a month or so, when new Legal Counsel is on board.

The next order of business was a review of the Commission's regulatory authority. Staff Attorney Gramitt informed that, in response to Commissioner Heffner's request at the last meeting, he has provided a copy of the Rhode Island Supreme Court's 1992 Advisory Opinion to the Governor, as well as a brief memorandum discussing the pertinent language. He summarized that the Commission and the General Assembly exercise concurrent authority to enact ethics laws, but the Commission has primary authority to do so. Chair Binder commented on footnote 1 on page 2, and questioned whether the Commission would enforce legislation passed by the General Assembly if it does not agree with it. She questioned whether there is a need to affirmatively adopt any substantive changes passed by the legislature each time it acts. Staff Attorney Gramitt replied that the Commission ratifies the legislation by enforcing it. Chair Binder suggested that the Commission should affirmatively adopt the Code. Legal Counsel Conley advised that, given the language of the 1992 Advisory Opinion, the Commission is

the sole authority for adopting the Code of Ethics. He stated that the opinion says that without the Commission's adoption, what was passed by the legislature does not become the Code. He indicated that he could see the Court refining that language if it had the opportunity to consider the issue again.

Chair Binder expressed that the Commission should look in other areas and review what changes have been made to the Code that have not been affirmatively adopted by the Commission. Commissioner Cheit suggested that this matter be placed on the agenda again since Commissioner Heffner is not present. Staff Attorney Gramitt indicated that it would be on the agenda for the next meeting.

The next order of business was a Legislative Update. Staff Attorney Gramitt informed that there is nothing new to report.

The next order of business was the Director's Report. Executive Director Willever advised that there are ten complaints and two advisory opinions pending. He reported that there is one appeal pending. Director Willever thanked Legal Counsel Conley for his years of service and wise counsel to the Commission.

The next order of business was New Business proposed for future Commission agendas. There being none, at 9:50 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner



**Magro, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**

**Secretary**